

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**UNITED STATES OF AMERICA,
Plaintiff,**

v.

Case No. 03-CR-194

**TERRONCE GARDNER
Defendant.**

DECISION AND ORDER

On October 4, 2005, I sentenced defendant Terronce Gardner to 84 months imprisonment following his guilty plea to conspiracy to distribute 500 grams or more of cocaine. Defendant has now filed a motion to reduce his sentence under 18 U.S.C. § 3582(c)(2) based on the Sentencing Commission's November 1, 2007 amendment to U.S.S.G. § 4A1.2. Defendant argues that under this amendment his criminal history score would be 1 point lower, making his category IV rather than V.

Eligibility for a reduction under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment designated for retroactive application by the Commission in U.S.S.G. § 1B1.10(c). U.S.S.G. § 1B1.10 cmt. n.1(A); see also *United States v. Perez*, 249 F.3d 583, 584 (7th Cir. 2001) ("Amendments apply only to sentences pronounced after the changes go into force, unless the Commission makes them retroactive."). Amendment 709 – the November 1, 2007 revision to the criminal history guidelines – is not listed in § 1B1.10(c). Accordingly, defendant may not invoke that amendment to obtain a sentence reduction under 18 U.S.C. § 3582(c)(2).

THEREFORE, IT IS ORDERED that defendant's motion for reduction of sentence (R. 729) is **DENIED**.¹

Dated at Milwaukee, Wisconsin, this 17th day of March, 2008.

/s Lynn Adelman

LYNN ADELMAN
District Judge

¹Even if Amendment 709 applied retroactively, it does not appear that defendant qualifies for any relief thereunder. Amended § 4A1.2 does not exclude all misdemeanor convictions from the criminal history score, as defendant seems to believe. Rather, it excludes only the misdemeanor and petty offenses enumerated in § 4A1.2(c). The offense defendant seems to refer to in his motion – a cocaine possession conviction for which he received a sentence of 10 days in jail – would score under the new guideline just as it did when defendant was sentenced.